

Application No.: 10/655,911

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Docket No.: 524522000500

REMARKS

A restriction requirement was set forth for pending claims 1-44. Given that the Examiner has indicated claims 1-44 to be pending, Applicants assume that the response filed on March 27, 2006 was not entered. Applicants request correction if our understanding is incorrect.

The Examiner has required restriction to one of the following Groups:

Group I. Claims 1-22, drawn to a composition and a kit, classified in class 424, subclass 401.

Group II. Claims 23 and 25-33, drawn to a method of treatment, classified in class 424, subclasses 449 and 401.

Group III. Claims 24 and 34-44, drawn to a method of cleansing, classified in class 424, subclass 406 or class 510, various subclasses.

Applicants hereby elect Group I (claims 1-22), with traverse, as further explained below. Upon election of Group I, the Examiner further requires election of one of the following species and subspecies:

Species

- I. The composition and kit, which is a patch.
- II. The composition and kit, which is not a patch.

Subspecies

1. A kit and a composition comprising capsaicin and a second composition comprising a substance in which capsaicin has a solubility of at least 10% w/w.

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2. A kit and a composition comprising capsaicin and a second composition comprising a substance in which capsaicin has a solubility of at least 10% w/w, wherein the second composition comprises polyethylene glycol and a polyacrylate thickening agent.

3. A kit and a composition comprising capsaicin and a second composition comprising a substance in which capsaicin has a solubility of at least 10% w/w, further comprising a third composition comprising an anesthetic.

4. A kit and a composition comprising capsaicin and a second composition comprising a substance in which capsaicin has a solubility of at least 10% w/w, wherein the second composition comprises polyethylene glycol and a polyacrylate thickening agent, further comprising a third composition comprising an anesthetic.

Applicants hereby further elect species II (not a patch) and subspecies 1 (capsaicin solubility of at least 10% w/w), also with traverse. Claims 1-4 and 10-13 are currently readable upon the elected species and subspecies. Applicants request examination of the elected subject matter on the merits. As noted by the Examiner, upon allowance of a generic claim, Applicants will be entitled to consideration of claims to additional species and subspecies which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 C.F.R. 1.141.

The restriction requirement is respectfully traversed on the basis that it does not pose a serious search burden on the Examiner. Applicants contend that a search for art describing kits and compositions having capsaicin and capsaicin cleansing compositions will inevitably also encompass art describing methods for cleansing and methods for treating capsaicin-responsive conditions.

Applicants expressly reserve their right under 35 U.S.C. § 121 to file a divisional application directed to the non-elected subject matter during the pendency of this application, or an application claiming priority from this application.

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CONCLUSION

In the unlikely event that the transmittal form is separated from this document and the Patent Office determines that an extension and/or other relief is required, Applicant petitions for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing **524522000500**. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Dated: May 11, 2006

Respectfully submitted,

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